THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 24129 OF 2007

Dated 22nd November, 2007

Between:
G.Srinivasulu

…Petitioner

And

Government of A.P.,
Agriculture & Cooperation (Cooperation IV)
Department, represented by its Principal
Secretary, Secretariat, Hyderabad and others.

…Respondents.

ORAL ORDER:

In this writ petition, the petitioner who is a member of the fourth respondent-cooperative society, seeks a declaration that the election notice dated 23.2.2007 issued by the third respondent – Election Officer and the consequential election to the office bearers held on 29.3.2007 by the Election Officer are illegal, arbitrary and violative of the provisions of the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995.

The fourth respondent is a society registered under the provisions of the A.P. Mutually Aided Cooperative Societies Act, 1995 (for short "the Act"). The society was registered on 29.7.2003 and there was an elected Board of Directors and Office Bearers. As much as the tenure of the Committee has come to an end, as per the resolution of the Board of Directors, the third respondent – Election Officer had issued election notice dated 23.2.2007 notifying the election programme and as per the said programme, elections were held on 24.3.2007. After conducting the elections, on the same day at 4.30 p.m., the result of elections was announced and respondents 5 to 13 herein were declared elected as Directors of the society. Consequently, further elections were held for Office Bearers on 29.3.2007.

It is submitted by the learned counsel for the petitioner, Shri D.V.Bhadram, that as per the bye-laws of the society, only an employee of the High Court can be the Election Officer, whereas, in the instant case, elections were conducted by the Election Officer, who is an employee of the Cooperative Department of the Government of Andhra Pradesh. It is further submitted that no General Body Meeting was convened for conducting of elections. In that view of the matter, the elections were not in accordance with the bye-laws of the society. It is submitted that though there is a forum for settlement of disputes including that of the election in the Act itself, but, as the elections were conducted by the third respondent

without any jurisdiction, the petitioner approached this court by invoking the remedy under Article 226 of the Constitution of India.

Though election notice was issued on 23.2.2007, elections were held on 24.3.2007 and result of elections was declared on the same day viz. 24.3.2007 at 4.30 p.m., the petitioner who is a member of the society has filed this writ petition after more than seven months to declare the election notice and the election of Directors and Office Bearers as illegal, mainly, on the ground that the elections were not conducted in accordance with the bye-laws framed by the society.

The Election Officer was appointed based on the resolution of the Board of Directors of the society and the election notification was issued to conduct elections to the Board of Directors. Further, a perusal of the various provisions of the Act and the bye-laws indicates that there is no pre-condition for calling a General Body Meeting to conduct elections. Circular instructions were issued notifying to all the members of the society for conducting of elections on 24.3.2007. The petitioner who claims membership in the society at no point of time has raised his little finger after issuance of the notice and before the conduct of elections questioning the authority of the 3rd respondent – Election officer.

Under Section 75 of the Cooperative Societies Act, 1964, Cooperative Tribunals were constituted for settlement of disputes. Even under sub-section (1) of Section 32 of the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995, tribunals are constituted, and, by sub-section (2) thereof, the provisions of Section 75 of the Andhra Pradesh Cooperative Societies Act, 1964 are made applicable mutatis mutandis for constitution of Co-operative tribunals under the A.P.Mutually Aided Co-operative Societies Act, 1995. Section 37 of the Act, particularly, sub-section (2) thereof, provides that any disputes relating to elections held to a co-operative society has to be referred to the Co-operative Tribunal for decision.

As much as the elections have already been held and in view of the specific alternative remedy provided under the statute itself, there is no reason or justification for the petitioner to approach this court by this petition filed under Article 226 of the Constitution of India. The binding nature of the bye-laws and also the effect of passing of resolution by the Board of Directors wherein an Officer of the Cooperative Department was requested to hold elections, are the matters which can be better resolved by recording evidence, if necessary, by the tribunals which are constituted specially for the purpose of deciding the disputes including that of election disputes. As much as the very conduct of elections by the Election Officer of a Cooperative Department is based on the resolution of the society, prima facie, it cannot be said that the said Officer has no jurisdiction per se so as to declare that the elections are conducted without any jurisdiction.

Having regard to the nature of dispute raised by the petitioner, which requires recording of findings based on the appreciation of evidence and various provisions of the Act and bye-laws and as the elections were already held as early as on 24.3.2007, there is no special reason to entertain this writ petition at this stage by by-passing the specific remedy provided to the petitioner before the Tribunal under the scheme of the Act.

In that view of the matter, this writ petition is liable to be rejected in limini on the ground of availability of alternative remedy under Section 37(2) of the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995. Accordingly, I do not see any merit in this writ petition and the same is dismissed at the stage of admission.

However, it is made clear that if any election dispute is raised before the competent tribunal, it is open for the tribunal to adjudicate the matter on its own merits.

There shall be no order as to costs.

22--11—2007 **R.SUBHASH REDDY, J.**

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